# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL J. O'HARA Claimant	)
VS.	) ) Docket No. 214,169
O'HARA PAINTING COMPANY, INC. Respondent	)
AND	)
INSURANCE COMPANY OF NORTH AMERICA Insurance Carrier	)
AND	)
KANSAS WORKERS COMPENSATION FUND	)

### ORDER

The Insurance Company of North America (INA) appeals from an Award entered by Administrative Law Judge Julie A. N. Sample on July 21, 1999. The Appeals Board heard oral argument on January 18, 2000.

#### **APPEARANCES**

Gary R. Terrill of Overland Park, Kansas, appeared on behalf of INA. Michael R. Wallace of Shawnee Mission, Kansas, appeared on behalf of the Kansas Workers Compensation Fund. There were no other appearances.

#### **RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award, except that item number 11 of the record should be deleted as there was no transcript of an October 7, 1997 Preliminary Hearing.

#### ISSUES

The Award grants benefits for a 5 percent whole body disability against O'Hara Painting Company, Inc., the respondent/subcontractor, and its insurance carrier, INA. On appeal, INA contends there was no insurance coverage with INA on August 25, 1995, the date of accident because it had canceled the policy for nonpayment of premium. Whether INA is responsible for payment of the award is the only issue for review.<sup>1</sup>

 $<sup>^{\</sup>rm 1}$  Although INA's Application for Review By Workers Compensation Board requested review of two additional issues, in its brief and during oral argument to the Board it was clarified that the only issue was whether INA had coverage for this claim.

IT IS SO ORDERED

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in her Award. On or about August 14, 1995, Ms. Lora Lee Ewbank, the insurance agent, represented to Mr. David O'Hara that respondent had workers compensation insurance coverage. She thereafter issued a Certificate of Insurance showing that coverage was afforded by the Insurance Company of North America. We agree with the ALJ that the evidence proves that the insurance agent had the apparent authority to bind INA when she issued the certificate of insurance and made the representations of coverage to Mr. David O'Hara in August of 1995. It is not reasonable to expect consumers to appreciate and draw distinctions between general agents and special agents. Under the facts of this case, the insurance carrier should be estopped from denying coverage. See Marley v. M. Bruenger & Co., Inc., 27 Kan. App. 2d \_\_\_\_\_, Syl. ¶ 3, (2000); Scott v. Wolf Creek Nuclear Operating Corp., 23 Kan. App. 2d 156, 928 P.2d 109 (1996). The Board affirms the finding of liability against O'Hara Painting Company, Inc. and INA, its insurance carrier.

# AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample dated July 21, 2000, should be, and is hereby, affirmed.

II IO OO OKDERED.	
Dated this day of Se	ptember 2000.
	DOADD MEMBED
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

W. Ann Hansbrough, Kansas City, MO
 Gary R. Terrill, Overland Park, KS
 Michael R. Wallace, Mission, KS
 O'Hara Painting Co., Inc., c/o David O'Hara, 15435 W 150 Terr, Olathe, KS 66062
 Serv Pro, Inc., 320 W Woods Chapel Rd, Blue Springs, MO 64015
 Julie A. N. Sample, Administrative Law Judge

Philip S. Harness, Director